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Current Topics.

Retirement of Sir Willes Chitty.

THE PROFESSION has received with profound regret news of the retirement of Sir WILLES CHITTY, the Senior Master and King's Remembrancer. Courtesy, patience and fairness, added to an encyclopædic knowledge of the law and legal procedure, cannot but combine to make a great Master; these are all qualities present in a marked degree in Master CHITTY. They were noticeable to all whose business took them to King's Bench Chambers, and who were so frequently assisted by the Master's friendly advice. It is to be sincerely hoped that Sir Willes' retirement will not mean that his invaluable assistance in revising the Rules of the Supreme Court will not be sought and given, and that his outstanding work as editor of the great practice books will be discontinued—but nearly a quarter of a century's arduous duties well performed have more than earned a retirement of happy leisure.

The High Court of Justiciary.

AS IS OBVIOUS from the fact that recently several Scottish cases under the Workmen's Compensation Acts have been cited in an English publication as having been decided by the High Court of Justiciary, there exists considerable haziness as to the functions of this tribunal and its relationship to the Court of Session. The latter court, it may be explained, is the supreme court for civil causes in Scotland, while the High Court of Justiciary is the supreme criminal court. It is true that all the judges of the Court of Session are also Lords Commissioners of Justiciary—a circumstance which has often caused perplexity in the minds of English readers—but this is quite a modern arrangement, for, until a statute of 1887, the High Court of Justiciary was constituted only of the Lord Justice-General, the Lord Justice-Clerk and five other Lords of Session, who, as Lords Commissioners of Justiciary, received as such a slightly higher salary. In Edinburgh and on circuit the High Court of Justiciary tries the graver charges on indictment, besides reviewing, like the King's Bench Division when taking the Crown paper, the decisions of inferior criminal tribunals. At the moment, no appeal lies to any court from a decision of the Court of Justiciary, and this applies not only to cases in which the decision is a fact arrived at with the aid of a jury, it applies likewise to those in which it is a point of law determined by the court itself. But, as those who observe the course of

legislation are aware, during the past session of Parliament the Criminal Appeal (Scotland) Act, 1926, has been placed upon the statute book, and, as it applies in the case of all persons convicted in Scotland on indictment after 31st October next, an appeal will thereafter lie from a conviction before the High Court of Justiciary to the newly constituted court. But, just as no appeal was held to be competent from the High Court of Justiciary to the House of Lords, so no appeal will lie from a decision of the Scottish Court of Criminal Appeal. This is the subject of express provision in the new Act. For the sake of the curious in such matters, it may be added that the robes of the judges are different according as they are sitting in the Court of Session or High Court of Justiciary.

Form of Probate Grant.

A CORRESPONDENT has kindly drawn attention to a matter which is causing a certain amount of confusion to practitioners. According to the present form of a general grant of probate, administration is granted to the *general* executors of all the estate which by law devolves to and vests in the *personal representative*—an expression which is defined in the Administration of Estates Act, 1925, to include a person deemed to be appointed executor as respects settled land. Now, the apparent effect of a grant in these words is to vest settled land of which the deceased was tenant for life in his general representatives, whereas in reality it is the trustees of the settlement (if there are any) who are the special executors of the deceased in respect to such land. The apparent effect of the general grant is, however, liable to be mistaken for the real effect, thereby causing flaws in titles which might well in many cases have been avoided by a careful re-drafting of the form of the general grant of probate. Representations have been made upon this matter by our correspondent to the Principal Probate Registrar, who, however, does not seem to be prepared at the moment to make any change in the form of the grant. No doubt, when a little more experience has been gained of the working of the separate grants of administration to general and special executors, the matter will be put right. Meantime practitioners would do well to ascertain as carefully as possible, before taking out probate, whether or not the deceased was entitled to settled land, i.e., land vested in the testator which was settled previously to his death and not by his will, and if he was, whether there were Settled Land Act trustees who on the testator's death became special executors. It is to be observed, however, that if the existence of settled land and

Settled Land Act trustees is overlooked and a mistake made in obtaining only a general grant, special provision has been made so that general grants so issued (as apparently to include settled land when there are special executors) need not be revoked, but may be amended on a registrar's order, with little expense and trouble.

Interference with Discretion of Taxing Master.

ORDER 65, r. 27 (29) provides that: "On every taxation the taxing master shall allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses." Attention may be drawn to the decision of the Court of Appeal in two recent cases, namely, *Old Colony Trust Co. v. Owners of S.S. "Lord Strathcona,"* and *Dominion Coal Co., Limited v. Lord Strathcona S.S. Co., Limited*, 25 LL.L.R. 344, in which the application of the above rule was considered. A bill of costs brought in by the mortgagees of the S.S. "Lord Strathcona" was reduced by the Assistant Registrar on taxation, but on objection being taken to this, the matter came before HILL, J., for review, and the learned judge made an order raising the taxed costs by about £1,400. The Court of Appeal reversed Mr. Justice HILL's order except as to one item, and in doing so unambiguously re-stated the circumstances when there should be no interference by the court with the discretion of the taxing master. These are, that the court will never review the decision of the taxing master upon a question of *quantum* alone. The master must have acted upon a wrong principle or applied a wrong rule in arriving at the taxation figures, and it is only when the *quantum* is affected by such action or application that there will be interference with his discretion as exercised.

The Reports and the Reporters—The Blackstones.

THE BLACKSTONES, WILLIAM and HENRY, unlike the CROKES, have other claims to fame and memory than those which arise from their connexion with the law. The elder, Sir WILLIAM BLACKSTONE (1723-1780) was a man of outstanding versatility. He was a poet, architect, politician and classical scholar, and possessed a considerable knowledge of farming, agriculture and natural history. His mother was the daughter of a Wiltshire squire, but died when he was only twelve years old. His father was a citizen and bowyer, or maker of bows and arrows, of London, and died before his birth, and he was brought up by his uncle, a London surgeon. At Pembroke College, Oxford, he soon acquired a reputation as a poet and classical scholar, but in 1741 he entered the Middle Temple and abandoned the muse for the law in a poem which has often been printed. He was elected a fellow of All Souls in 1744, and took his degree of B.C.L. in 1745, and was called to the Bar in 1746. From 1746 to 1760 he appears to have attended the courts with great assiduity, taking notes of endless cases, in only two of which his own name appears as a pleader, but all the while he was studying law at Oxford, and in 1758 he was appointed the first Vinerian Professor of Law at Oxford. In 1761 he sat in Parliament for the "rotten" borough of Hinton in his beloved Wiltshire, and now, like Sir SAMUEL ROMILLY, after sixteen years of long waiting, his practice at the Bar began quickly to grow, and his name occurs quite frequently in his reports. He wanted all he could earn, as he had recently married, and soon had a growing family of nine children. His industry, as shown by his "Commentaries," which are a household word among lawyers, was amazing, and his books had a very large sale in America. He was undoubtedly well liked in the County of Wilts, for he was again returned

to Parliament for the Westbury Division. His orderly mind rebelled against the methods of JOHN WILKES, and he came into sad conflict with that very clever personage, and one cannot help feeling that poor BLACKSTONE got far the worst of the argument. Finally in 1770 he accepted an offer to go as judge to the Common Pleas. He took part in many leading cases of the time, notably *Scott v. Shepherd*. He died in 1780, leaving only one of his nine children in the law, who also succeeded him as Vinerian Professor. HENRY BLACKSTONE, the reporter, was his nephew, a man shy and retiring, who left no monument but two volumes of very accurate and painstaking reports, which contain no references to himself. The reports of the uncle and nephew cover a period of fifty years, from 1746 to 1796. Those of WILLIAM first appeared in print a year after his death. Those of HENRY were brought out from time to time in the true modern reporting style, but always tremulously and with much deprecation. Those of WILLIAM would probably not have appeared at all but for the fact that they were a commercial proposition, coming from the pen of the author of the "Commentaries," but probably written only for his own special edification. They had all, however, been collected and neatly arranged with his accustomed accuracy and even meticulousness, and must have given very little trouble to their editor JAMES CLITHEROW. It had been much hoped that Sir WILLIAM BLACKSTONE's old friend Dr. BUCKLER, of All Souls College, Oxford, would have taken over this task. Dr. BUCKLER declined owing to ill health.

The Board of Guardians (Default) Act, 1926, in operation.

THE EFFECT of the application to West Ham of the provisions of the Board of Guardians (Default) Act, 1926 (which we noted *ante*, p. 922), is already being felt, and the "appointed guardians"—to adopt the expression employed in s. 1 (1) of the Act—who have been appointed in substitution for the defaulting guardians have now taken measures for putting the financial affairs of the union in order by calling upon a large number of persons to whom relief was given during the strike by way of loan, to pay the moneys that were then advanced to them.

As far as the granting of relief is concerned during a strike, it is clear that the guardians are in no way to be influenced by the merits or demerits of the trade dispute, and their sole function with regard to the granting of relief is, according to the circular issued by the Ministry of Health during the strike, to determine whether the applicant is or is not a person who is able-bodied and physically capable of work, whether work is or is not available for him, and if such work is not available for him, whether it is or is not so unavailable through his own act or consent (*cf. also A.-G. v. Merthyr Tydfil Guardians*, 1900, 1 Ch. 516; *A.-G. v. Poplar Guardians*, 1924, 40 T.L.R. 752; *A.-G. v. Bermondsey Guardians, ib.*, at p. 512).

As regards the right of guardians to recover poor relief from the recipients thereof, the Court of Appeal in *Pontypridd Guardians v. Drew*, 42 T.L.R. 405, have held that the guardians have no common law right of recovering *ordinary* poor law relief in cases at any rate where the pauper to whom the relief was given was of full age and contractual capacity. The Court of Appeal, however, expressed no opinion as to whether any such right of recovering any such relief exists where the pauper was incapable of contracting at the time when the relief was given, so that the decision in *In re Clabbon*, 1904, 2 Ch. 465, where the recipient of the relief was temporarily insane, and in *Birkenhead Guardians v. Brooke*, 22 T.L.R. 583, where the recipient was an infant, must still be regarded as authoritative.

Where, of course, relief is given by way of loan, under statutory powers, such as those given by s. 29 of the Poor Relief Act, 1819, the guardians have a statutory right of recovering the relief in certain circumstances.

Creditor's Duty to Guarantor.

IN the introduction to the first edition of his book on Principal and Surety, Mr. Justice Rowlatt confesses that he found the subject a difficult one, and this sentiment will be echoed by every common lawyer who has had occasion to search for the principles underlying this subject—and who at some time or other has not? But even a lawyer's difficulties must pale before the surprises which await the lay guarantor when faced with his legal position, and it may be well to review broadly those aspects of it which will strike the average guarantor as unexpected and which will thus be the more probable sources of enquiry from the profession.

From the category of those who find what they do not expect there may be excluded those merchants and factors who become guarantors in the regular and ordinary course of business.

It will be agreed that in the vast majority of cases a guarantor, when appending his signature, seldom has in mind the possibility of being called upon to pay; how often has the phrase "mere formality" been used to grace the occasion? If eventual liability occurs to him he generally imagines that he will only be called upon when every means of compelling the debtor has been exhausted. For such a misunderstanding of the law the only juristic justification which can be found must be traced to a misinterpretation of that imaginary fount of liberties and actual fount of errors, *Magna Carta*. C. 8 (1297) provides: "neither shall the sureties of the debtor be distrained as long as the principal debtor is sufficient for the payment of the debt." It was, however, clearly laid down by the courts in 1664 that "the said Act does not extend nor was ever taken to extend to Sureties in Bond or Recognisance but to Pledges and Manufacturers only who by express words are not responsible unless their Principals become insolvent and so are conditional Debtors only": *Att.-Gen. v. Resby*, Hardres 377. This principle of the guarantor's immediate liability upon the debtor's default was re-affirmed in more recent times in *Att.-Gen. v. Atkinson*, 1827, 1 Y. & J. 207.

Probably as a mitigation of this powerful right in the creditor's hands the Court of Chancery seemed, at one time, inclined to establish a degree of duty on the part of the creditor towards the guarantor. "Where any act has been done by the obligee that may injure the surety, the court is very glad to lay hold of it in favour of the surety." (Per Sir RICHARD ARDEN, M.R., in *Law v. East India Company*, 1799, 4 Ves. 824, at p. 833). But in the same court a little later Lord ELDON enunciated the principle from which the creditor's comparative freedom from onerous obligations to the guarantor may be traced; "it is his (the guarantor's) business to see whether the principal pays and not that of the creditor." From this it follows naturally that when a default has been committed the creditor is under no obligation to give notice of that default to the guarantor. To this rule one exception has been grafted by mercantile usage and confirmed by the Bills of Exchange Act, 1882; the duty of a holder of a bill of exchange to give notice of dishonour to the drawer or indorser who is in the position of surety for the acceptor. (See *Carter v. White*, 1883, 25 Ch. D. 666.)

It has already been stated that the creditor is under no obligation to take proceedings against the debtor before calling upon the guarantor, and it is but a corollary of Lord ELDON's dictum that the creditor should be relieved even of a duty to request payment from the debtor: *Rede v. Farr*, 1817, 6 M. & S. 121. But it is a generous extension which decrees that the guarantor's liability arises without any request made to him to pay: *Hitchcock v. Humsfrey*, 1843, 5 Man. & G. 559, unless the guarantee specifically provides that a demand shall be made: *Re Brown's Estate*, *Brown v. Brown*, 1893, 2 Ch. 300.

The law relating to the creditor's duty to disclose information is also somewhat unfavourable to the guarantor. It is best exemplified in the case of guarantees to a bank, which is usually in possession of relevant information. Prior to the signing of the guarantee it is unnecessary for a bank, apart from participation in fraud, to volunteer any disclosure as to the state or history of the account or its knowledge of the debtor's commercial character, however material it may be for the guarantor to know these things. It is for the guarantor to seek such information as he requires: *Hamilton v. Weston*, 1845, 12 Cl. & Fin. 109. He is in an even more unfavourable position during the continuance of the guarantee. Although he would be prudent to make enquiries before signing the contract, he cannot be expected to repeat them continuously while it is in force. Nevertheless, although the bank may have reasonable grounds to suspect misuse of the guaranteed account by the debtor, it owes no duty to bring its suspicions to the guarantor's notice. Thus the agent of the G. estates, whose accounts with the N. Bank were guaranteed by Lord G., opened a new account called a "capital account," which the branch manager of the N. Bank knew to be an estate account. From this the agent transferred £1,000 by a cheque in favour of the manager of a distant branch of the L. Bank. The agent's manager suspected that the money was being used to meet the agent's personal liabilities and he made enquiries of the manager of the L. Bank, but failed to obtain any definite information, by letter or by interview. The transfer was in fact in fraud of Lord G. It was held that there was no duty on the bank to disclose that they held suspicions that such was the case: *National Provincial Bank v. Glanusk*, 1913, 3 K.B. 335. The pendulum has swung far over since the time when the court was very glad to lay hold, in the guarantor's favour, of conduct by the debtor to the guarantor's detriment. H.

Conflict of Laws and Validity of Assignment of Debt.

(Continued from p. 948.)

This decision, however, does not appear to be any authority for the proposition stated in "Dicey," since, as Mr. Justice GREER pointed out in *Republica de Guatemala v. Nunez* (ib., at p. 629), "the only point argued was whether the English courts could ignore the decision of a Scots court which, it was conceded, would otherwise be applicable, merely because it happened to be contrary to the views of international law, as understood by English lawyers." Furthermore, in that case it was not the effect of an assignment in Queensland that had to be decided, but the effect of an assignment by process of law made in Scotland of a debt owing by a Scots debtor.

In *In re Maudslay, Sons & Field, Maudslay v. Maudslay, Sons & Field*, 1900, 1 Ch. 602, receivers were appointed of an English company at the instance of debenture-holders. There was a debt owing to the company by a French firm. After the appointment of the receivers, certain English creditors of the same company took proceedings in France for the purpose of attaching this debt, whereupon the plaintiffs in the debenture-holders' actions moved the court for an injunction to restrain these English creditors of the French firm from continuing proceedings in France with a view to recovering this debt. It was held that the French debt must be regarded as situated in France and subject to French law, and that the English creditors could not be restrained from taking proceedings for the attachment of the debt, and that such attachment, which alone was recognized by French law, ought to prevail over the title of the debenture-holders.

But this case again does not appear to be any authority for Dicey's proposition, *supra*, inasmuch as the judgment was not concerned with the validity of an assignment in England between two English citizens, but with the effect of an

assignment by process of law in France in favour of a creditor who was not a party to the debenture deed (per GREER, J., in *Republica de Guatemala v. Nunez*, *ib.*, at p. 629). COZENS-HARDY, J., however, refers in his judgment to the proposition of law as stated in "Dicey" (*ib.*, at p. 610). Although the learned judge was not satisfied that the authorities (*supra*) cited by DICEY necessarily involved this principle, he was nevertheless of opinion that the principle, as stated by DICEY, was correct. This expression of opinion, however, is not conclusive and is merely *obiter*. It is submitted that, on examination, the cases do not support this proposition at all, and one of them, in fact, i.e., *Lee v. Abdy*, *supra*, appears to be in entire conflict therewith.

In *Kelly v. Selwyn*, 1905, 2 Ch. 117, a husband, who was domiciled in New York, assigned in New York to his wife a reversionary interest in an English trust fund. According to the law in New York, notice was not necessary in order to complete the assignment. Later the husband, who was then in England, assigned his interest in the same property by way of mortgage to the plaintiff, who duly gave notice of the assignment to the trustees. It was held that the plaintiff was entitled to priority. The grounds, however, on which this judgment is based had nothing whatever to do with the question of the law governing the validity of assignments effected in one country of choses in action situated in another. The *ratio decidendi* of that case cannot be better illustrated than in the words of WARRINGTON, J., as he then was (*ib.*, at p. 122). After expressing the opinion that such cases as *Lee v. Abdy*, *supra*, and the *Queensland Case*, *supra*, had no bearing on the actual point in question, the learned judge said: "The ground on which I decide . . . is that the fund here being an English trust fund and this being the court which the testator may have contemplated as the court which would have administered that trust fund, the order in which the parties are to be held entitled to the trust fund must be regulated by the law of the court which is administering that fund."

Of the cases cited above, *Lee v. Abdy* appears to be the one most similar to the case of *Republica de Guatemala v. Nunez*; and if one applies the principle of the former to the facts of the latter, it would seem right to hold that the purported assignment in favour of the defendant Nunez was bad, inasmuch as it was bad by Guatemalan law, that being the law of the country where the purported assignment was made.

Quite apart from authority, it would only seem right to hold that the transfer in another country, especially when the transferor and transferee were both domiciled there, of a chose in action situate in another country, should be governed by the law of the country where such transfer took place, since the transfer in such a case is in fact contractual in character, and the parties are to be presumed to have intended the contract of transfer to be governed by the law of the country where such transfer takes place; and as Mr. Justice GREEN pointed out in *Republica de Guatemala v. Nunez* (*ib.*, at p. 629): "It seems a little unreasonable and inconsistent with international comity that a transfer made in a foreign country between two citizens of that country domiciled there and subject to its laws, should be held to be valid as between those who represent the transferor, and would otherwise be entitled to the property in question, and the transferee, merely because it is in accordance with the requirements of English law . . . In my judgment, the words used by Mr. Justice DAY . . . in *Lee v. Abdy*, *supra*, apply to the facts of the present case: 'It seems . . . that the question which really arises here is one of the validity of a contract which is purely foreign though such contract has relation to a chose in action which possibly arises upon an English contract.'"

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

A Conveyancer's Diary.

[COMMUNICATED.]

The provisions in the recent real property legislation for the conversion into long terms of perpetually renewable leaseholds are intricate and difficult of construction. By the L.P.A., 1922, s. 145, it is provided that for the purpose of converting perpetually renewable leases and underleases into long terms, and for providing for the interests of the persons affected, the provisions in Sched. 15 of that Act are to have effect. Section 1 (1) of Sched. 15, provides that land comprised in a perpetually renewable lease, subsisting at the commencement of the Act, shall vest in the person who, at such commencement, was entitled to such lease, for a term of 2,000 years, to be calculated from the date at which the existing term commenced, at the rent and subject to the lessees' covenants and conditions which under the lease would have been payable or enforceable during the subsistence of such terms; and by s. 1 (2) the rent, covenants and conditions shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by the Act, and that term shall take effect in substitution for the term created by the lease, and be subject to the like power of re-entry (if any), and other provisions which affected the term created by the lease, but without any right of renewal.

Section 2 of the Schedule deals with perpetually renewable underleases. Section 12 provides for the conversion into additional rent of the fines and other sums payable upon renewal, and the terms of this section require to be carefully studied. Sub-section (1) (as amended by the 2nd Sched. to the Act of 1924) provides that where any fine or other money is payable on renewal "an amount to be ascertained as hereinafter provided" shall, save as in the Act provided and unless commuted, become payable to the lessor as additional rent during the subsistence of the term or sub-term created by the Act, by as nearly as may be equal yearly instalments, the first instalment to be paid at the end of one year from the commencement of the Act. The amount of the fine, in cases where there is a choice of the time for renewal will usually vary according to the length which has expired of the existing term. Sub-sections (2) and (3) of s. 12 of the 15th Sched. to the Act of 1922, contained provisions fixing, for the purposes of the Act, the date for renewal. Sub-section (2) has been wholly repealed by the Act of 1924; but the original clause may be of assistance in construing the provisions which have been inserted in its stead. Sub-section (2) was in the following terms:—

"Where the lessee or underlessee was entitled to renew *at different times and the amount payable on renewal varied according to the time selected for renewal under a sliding scale or otherwise, then for the purpose of ascertaining the amount of the annual instalments of additional rent, the fines and other payments shall be deemed to have been payable on the last day on which the lessee or underlessee would have been entitled to renew the lease or underlease if it had remained renewable, regard being had to the date of the last renewal."

The new clause in the Act of 1924, being s. 5 (3) of the 2nd Sched. to the L.P.A., 1924, is as follows:—

"For sub-paragraph (2) of paragraph 12 the following sub-paragraph shall be substituted—

"(2) In default of agreement and unless the Minister, having regard to the practice and other circumstances of the case, otherwise directs, the following provisions shall have effect for the purpose of ascertaining the annual instalments of additional rent:

"(a) the additional rent shall be ascertained on the basis of the fines and other payments which would have

* The italics throughout are mine.

been payable on the occasion of the first renewal after the commencement of this Act, if this Act had not been passed;

'(b) where the lessee or underlessee has a right to renew at different times, the occasion of the first renewal shall be such date as he may, by notice in writing given to the lessor within one year after the commencement of this Act, select from among the dates at which he would have been entitled to renew his lease or underlease had it remained renewable, or, in default of such notice, the last day on which he would have been entitled to renew, regard being had to the date of the last renewal.'

It will be observed that under sub-paragraph (a) of the above clause, the fine on the basis of which the additional rent is to be ascertained, is the fine which would have been payable on the occasion of the first renewal after the Act; and by sub-paragraph (b), where the lessee has, under his lease a choice of dates for renewal, he is given by the Act a right (exercisable within one year after the commencement of the Act) of selecting which of the authorised dates shall be "the occasion of the first renewal" after the commencement of the Act.

By s-s. (3) of s. 12 of Sched. 15 to the Act of 1922, it is provided that "where the time at or within which the fine or other money must be paid is not definitely fixed or ascertainable from the lease or underlease," the same shall, for the purpose of ascertaining the amount of the annual instalment of additional rent, be deemed to have been payable on such date as may, within one year from the commencement of the Act—(the commencement of the Act being subsequently fixed as the 1st July, 1926)—be agreed between the lessor and the lessee or underlessee, or, in default of such agreement, as may be fixed by the Minister.

The question arises what leases fall within s-cl. (b) of the paragraph which, by the Act of 1924, is substituted for s. 12 (2) of the 15th Sched. to the Act of 1922, and what leases fall within s. 12 (3). Many leases, for example, contain a power for the lessee to renew at any time during the term. In such a case the lessee has "a right to renew at different times," and therefore, *prima facie*, s-cl. (b) would seem to be applicable. On the other hand, the words "from among the dates at which he would have been entitled to renew" are hardly suitable, as applied to such a lease. The words in s-s. (3): "Where the time at or within which the fine must be paid"—(which means apparently, the time at or within which the lease may be renewed)—"is not definitely fixed or ascertainable from the lease," might be held to apply to a case where the lessee had the right to renew at any time during the term. Such a view, however, leads to the unreasonable result that a lessee who, under his lease has a right of renewal limited to certain dates, is allowed, for the purposes of the Act, a right of choice and placed in a more favourable position than a lessee who under his lease, has a superior right of renewal which he may exercise at any time during the term. Upon the whole, it is thought that a lease, the right to renew which may be exercised at any time during the term, falls within s-cl. (b), and that the lessee accordingly is entitled to select a date which shall be the occasion of the first renewal after the commencement of the Act, such selection to be made before the 1st January, 1927. Sub-clause (3) of s. 12 of Sched. 15 to the Act of 1922, would seem to apply to leases for lives.

(To be continued.)

The attention of the Legal Profession is called to the fact that the PHOENIX ASSURANCE COMPANY Ltd., Phoenix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at 11, Waterloo Place, S.W.1; 187, Fleet Street, E.C.4.; 20-22 Lincoln's Inn Fields, W.C.2, and throughout the country.

Landlord and Tenant Notebook.

Attention may usefully be drawn to the county court case of

Length of Notice to Determine Weekly Tenancy.

Billing v. Grove, a decision of His Honour Judge Barnard Lailey, K.C. (reported in the Law Journal County Court Reporter for the 28th ult., at p. 57). This case has a bearing on the requisite length of a notice for the purpose of determining a weekly tenancy. The tenancy here was a weekly

one, running from Monday to Monday, and on Monday, the 12th April, 1926, a notice to quit on the following Monday was served. It was contended that the notice was bad, and the proposition of law that was put forward was that a notice to quit, in the case of a weekly tenancy, must be given not later than the eighth day before the day on which it is to operate. The learned county court judge, however, rejected this principle, and held that the notice was good. If the above principle was correct, then the notice would undoubtedly have been bad, since it should have been given not later than on the Sunday.

An exactly similar point came up for consideration recently before a Divisional Court in *Newman v. Slade* (70 Sol. J. 738). That was also a case of a weekly tenancy, from Monday to Monday, and there the court held that a notice given on a Monday, to expire on the following Monday, was good. The principle of these cases may therefore be summed up shortly as follows: In order to determine a weekly tenancy a calendar week's notice is sufficient, and it is not necessary that the notice should be a seven clear days' notice.

As we have dealt with the case of *Newman v. Slade* (*supra*, at p. 750), we will not examine the principle laid down therein any further, but will take the occasion of dealing briefly with the case of *Weston v. Fidler*, 88 L.T.R. 769, and examining the ground on which that case is distinguishable from such cases as *Newman v. Slade* and *Billing v. Grove*.

In *Weston v. Fidler* the facts were shortly as follows: That was also a case of a weekly tenancy, but the agreement provided that the tenancy might be terminated by either landlord or tenant giving to the other one week's notice; and that the key was to be delivered to the landlord or his agent before twelve o'clock on the day of leaving. Now, normally, when a notice is given to expire on a given day, the tenant has until midnight on that day for vacating the premises, but in *Weston v. Fidler*, according to the express terms of the agreement, the tenant was only given until noon of the last day for vacating. The tenant in *Weston v. Fidler* was given notice on Monday, the 17th November, 1902, at 10 a.m.—and the exact time is of importance—to quit the premises on the following Monday, the 24th November. By the terms of the agreement the tenant would, of course, have been obliged to vacate the premises by 12 noon on the 24th November, and not by twelve midnight on that day, as would have been the case ordinarily, but for some express provision to the contrary. The court, however, held, notwithstanding the fact that the notice was served at 10 a.m., and so before noon on the 17th November, that the notice was a bad one. Let us examine the judgment delivered by Wills, J.: "There is no question of what is a reasonable notice for this weekly tenancy," said the learned judge (*ib.*, at p. 770), "the length of the notice being provided for by the agreement, and it is to be such as will expire and be effectual by 12 o'clock on the following Monday. It has been suggested . . . that it is sufficient to give a notice on one Monday before 12 o'clock to expire at 12 o'clock on the next Monday. But I can see no reason why the usual rule should not apply, that the law does not take notice of the fraction of a day, and this notice, I think, must be treated just as it would be if it had been given after 12 o'clock on the Monday upon which it was given. That is a convenient rule, because if it did not exist, there would be perpetual conflicts as to whether the notice was given or

a particular act had taken place at 12 o'clock, 12.30, or 1 p.m., and we should have all sorts of questions as to local time and Greenwich time, and all sorts of other questions. I have no doubt that this is the origin of a rule which has now existed for a very long time with reference to things which are to be done on a particular day. I think, therefore, it is far more convenient to follow the old rule that the requisite notice must be one which leaves *seven clear days*."

It would seem that the learned judge has used the expression "seven clear days" in a somewhat loose manner, but if *Weston v. Fidler* was meant to decide that, in order to determine a weekly notice, seven clear days' notice in the strict sense must be given, so that, for example, in order to determine a Friday to Friday tenancy, the notice must be given not later than the second Thursday previous to the Friday on which the notice is to expire, then *Weston v. Fidler* cannot be regarded as being good law, and is certainly at variance with such cases as *Newman v. Slade*, *supra*. But *Weston v. Fidler* can be explained on the ground that the notice, as Wills, J., put it in his judgment, had to be treated "just as it would be if it had been given after 12 o'clock on the Monday upon which it was given." Reference on this point may be made to the judgment of His Honour Judge Barnard Lailey, K.C., in *Billing v. Grove*. "Normally," said the learned judge, "a notice to quit on a given day (say Monday) becomes operative at midnight—the tenant having the whole day at his disposal—and therefore, if a notice be given at any time on the previous Monday, there must of necessity be a full week before its expiry; whilst in *Weston v. Fidler* this would not be so unless, as the result of an inquiry, which the court declined to make, it was found that the notice was received before 12 o'clock noon."

As to the actual decision on the particular facts in *Weston v. Fidler*, it may be doubted whether that decision is correct. Wills, J., in that case based his decision as to the insufficiency of the notice on the ground that the law will not take notice of fractions of a day. But that argument would appear to cut both ways. Why should it not be argued that, inasmuch as the law does not take notice of fractions of a day, the law would not take notice of the fact that the tenancy was to determine at 12 noon, and would accordingly treat any notice to quit that was given as if the tenancy was to expire at 12 o'clock midnight, and not at 12 noon, and that accordingly the notice that was in fact given in that case was a valid notice?

Correspondence.

Points in Practice.

Sir,—(1) Referring to your issue of 28th ult., and answer to Practical Point No. 434 therein, is it quite clear that the sole executor, in carrying out the trust for sale, would be selling as the sole personal representative "as such," within the meaning of s. 27 (2), or would he not become a trustee for sale?

The question did not make it clear as to whether the executor would be selling as sole personal representative "as such" or whether as trustee under the trust for sale. If the latter, it is submitted that he cannot give a valid receipt himself for the purchase money.

(2) Referring also to answer to Practical Point 437 in your same issue, would not the assignee be liable to the implied covenants set out in s. 77, s-s. (1) (c) of the Law of Property Act, 1925, even although the deed was not executed by him?

(3) Referring also to Practical Point No. 430, could not A sell as beneficial owner without disclosing the trust (Law of Property Amendment Act) if he held the title deeds?

Builth,

13th September.

SUBSCRIBER.

[(1) The executor can sell as such and give receipt. But if he purported to sell under the trust for sale, a purchaser would require an assent by him as executor to himself as devisee-trustee, and appointment of a new trustee to give receipts.

(2) This is fully dealt with in the answer to Q. 465 at p. 964.

(3) The purchaser might acquire a good title, but the proper course is that indicated in the answer given.—Ed., Sol. J.]

Succession Duty on Leaseholds.

Sir,—I believe it to be the opinion of most conveyancers that succession duty is not a charge on unsettled leaseholds. This opinion is due to the fact that the Finance Act, 1894, s. 18, which makes the duty a charge, speaks only of "real property," the ordinary meaning of which excludes leaseholds. But the Act contains no definition of "real property," and the Succession Duty Act, 1853, s. 1, expressly defines it as including leaseholds.

In the new "Wolstenholme & Cherry," Vol. I, in the comment on the Law of Property Act, 1925, s. 16 (6), it is stated that no Acts impose a charge of succession duty on leaseholds. I have written to Sir B. L. Cherry pointing out that this statement is in error, and he has written me a courteous letter admitting the mistake, and stating that it will be corrected in Vol. II.

My attention was directed to the point by a letter from a Dublin solicitor, who pointed out the same mis-statement in my "Handbook on the Death Duties," published by The Solicitors' Law Stationery Society in January last, and as a large number of your readers have purchased the handbook, I desire to draw their attention to the mistake, which occurs on p. 85.

London, W.C.1.

17th September.

H. ARNOLD WOOLLEY.

THE FREE STATE CENSUS.

Some aspects of the disclosures of the Free State Census, notably the decline of population and the movement of rural workers to the towns, are serious, but the country has received the report with a feeling of subdued satisfaction. It is thankful that the losses of three years of upheaval and anarchy have not been greater than they are.

The *Irish Times* says that the toll of Ireland's manhood in the Great War must enfeeble the national vitality for many years, that the economic vacuum left by the withdrawal of the British troops will not be filled in this generation, and that the steady flow of the rural population to the towns is a grave phenomenon in a country which lives by agriculture and has few urban industries. "The two conditions needed for prosperity," it adds, "are the reign of law and the full development of the national industry of agriculture. Already we enjoy the one, the achievement of the other depends wholly upon our own efforts. These efforts, and here is the Census report's most urgent warning, must be concentrated on a redressing of the balance between town and country. So long as the Saorstát's economy defies the law of her nature, her times will be out of joint."

The *Irish Independent* finds cause for alarm in the falling birth rate. The average annual birth rate per thousand persons during the fifteen years covered by the Census was 21.1, which is among the lowest of the principal countries for which statistics are available. This factor, it says, cannot be considered apart from the influences of the high cost of living, unemployment, and, above all, the housing shortage.

MICROPHONE IN COURT.

A defendant in a case at London Sessions recently was deaf, and he was allowed by the judge to sit in the well of the court instead of in the dock. A warder sat beside him and repeated the evidence that was given into a microphone. When the defendant was cross-examining, the witness spoke into the microphone while the defendant held the receiver to his ear.

LAW OF PROPERTY ACTS. POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

UNDIVIDED SHARES—BARE LEGAL ESTATE IN TRUSTEE ON 1ST JANUARY, 1926.

457. Q. A, many years ago, purchased a freehold property for the purposes of his business. A subsequently took his four sons into partnership, and this freehold property was treated as part of the partnership assets, although no conveyance to the firm was ever executed. A died in 1914, and his capital in the partnership (including his interest in this freehold property) was paid out to his executors by the surviving partners. A appointed two persons as executors and trustees of whom only one now survives. The trustees of A have many years ago cleared the estate, and all that is left in the hands of the surviving trustee is a settled share of the residue. The surviving partners have now converted their business into a company, and desire this freehold property to be conveyed to such Company. The L.P.A., 1925, 1st Sch., Pt. 4 (1) (b) seems to deal with this. As no money is payable to the deceased's estate, there is apparently no need for a second trustee. By the Interpretation Act, 1889, "trustees" include "trustee." It would appear therefore that the company will get a good title if, after reciting the facts, the four surviving partners convey and the surviving trustees of A's will merely joins to convey the outstanding legal estate. Is this so? If there had been only one surviving partner the transitional provisions would apparently have vested the legal estate in him, but as there were four surviving partners, cl. 7 (f) of Pt. I, 1st Sch. has prevented this?

A. If A's sons had been devisees of the partnership property, it might have been arguable that the executors had assented and the legal estate had accordingly passed, see cases cited in answer to q. 367, p. 772, *ante*. The actual transaction, however, between the sons and the executors appears to have been in the nature of a sale not consummated by conveyance, and the legal estate thus remained in the surviving executor as bare trustee on 31st December, 1925. The L.P.A., 1925, 1st Sched., Pt. II, not being applicable for the reason given in the question, Pt. IV, para. 1 (1) (b) operated to give him a trust for sale. The course suggested in the question may be recommended only if, having regard to s. 42 (1) (b) of the L.P.A., 1925, it is made clear that the trust for sale is destroyed by an intention that the disposition shall operate under s. 23. And if money is to pass, the opinion is here given that the better plan would be for the executor to convey to the four sons under s. 23, with the result stated in s. 34 (2), and that they should then convey as trustees for sale to the company. Alternatively the executors could appoint the sons trustees in his place under s. 36 (1) and (6) of the T.A., 1925—with, however, an adjudicated stamp to include the express or implied vesting under s. 40.

DISCRETIONARY TRUST IN LAND—SALE.

458. Q. By a settlement for the benefit of a married woman and her children certain properties and moneys were conveyed and assigned to trustees, upon trust during the lifetime of the wife and twenty-one years after her decease in the absolute discretion of the trustees to pay the income to or for the benefit of the wife or her children, and upon further trust during the same period and at the like discretion, to sell and dispose of all or any part of the capital of or property or investments representing the trust funds. The trustees having capital moneys in hand in 1904 at the request of the

wife bought a leasehold house for the occupation of the beneficiaries. The settlement did not authorise a purchase of property and the house was assigned to the trustees as joint tenants, as if they were beneficial owners, and the purchase money was stated to be moneys belonging to them on a joint account, but no reference was made to any trust. It is now desired to sell the house but it is uncertain who has the legal estate therein. As there was a secret trust did the legal estate become vested in the wife on 1st January, 1926? If not is there any necessity to disclose the trust to a purchaser, and what answer should be made to the possible inquiry as to the existence of a secret trust?

A. For the purposes of this answer it is assumed, since the later trusts are not stated, that the wife is still living. For a reliable opinion on the issue whether the trustees had a trust for sale within s. 205 (1) (xxix), or a mere power of sale, perusal of the whole settlement would be necessary: see answer to Q. 240, p. 540. The extract given, however, indicates a trust rather than a power. The investment being unauthorised a court would probably before this year have required the concurrence of a beneficiary to a sale, to protect the trustees and a purchaser: see *Re Patten and Edmonton Union*, 1883, 52 L.J. Ch. 787. This case appears still to be applicable though the trustees can make title without such concurrence. If they sell they should in their own interest obtain a letter from a beneficiary, preferably the wife, assenting to a sale, assuming that they are advised that the trust deed contains a trust for sale as opposed to a power of sale. If they only had a power of sale, land subject to the trust was settled land, and on 1st January, 1926, would have vested in a tenant for life, had there been one, under the L.P.A., 1925, 1st Sched., paras. 3 and 6 (c). Since there was no one entitled as of right to income, there was no tenant for life, and the trustees on such supposition would retain the legal estate and exercise the powers of a tenant for life under s. 23 (1) (b), but, as to the latter, only after executing a vesting deed in their own favour: see S.L.A., 1925, 2nd Sched., para. 1 (2) and s. 13. They can thus one way or the other make title, and a purchaser inquiring about a secret trust can be referred to *Re Ford and Hill*, 1879, 10 C. D. 365, or the L.P. (Amend.) A., 1926, Sched.

SOLE TRUSTEE—UNDISCLOSED TRUST—POWER TO SELL.

459. Q. Freehold land was conveyed in 1913 to A and B in fee simple as joint tenants. The purchase-money was provided partly by A and B and partly by other persons and the bank with whom the deeds were deposited as security after completion. The land was acquired for the purpose of developing it as a building estate in order that the poorer classes might build their own houses and not with a view of making any profit. Since 1913 plots have been sold off and A and B have conveyed as trustees, although there was nothing in writing declaring any trusts. B has recently died, and the question arises as to whether A, the survivor, can still continue to convey plots of land on the estate and give an effectual receipt for the purchase-money, or whether two trustees are necessary.

A. On 1st January, 1926, the case fell within the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), and A and B held on trust for sale, just as they would have done if they had been equitably as well as legally entitled under para. 1 (2). By the amendments to s. 36 (2) and the 1st Sched., Pt. II, para. 3,

contained in the L.P. (Am.) A., 1926, Sched., A might be able to give title to a purchaser, but only on the representation, contrary to the fact, that he was solely and beneficially interested. The proper course is therefore for him, or other the person entitled to do so, to appoint a new trustee in the place of B, and then for the two to sell under the statutory trust.

UNDIVIDED SHARES—SEPARATE TRUSTS—SALE—PROCEDURE.

460. Q. A and B were tenants in common of a block of freehold cottages. A died in 1892, having by his will devised all his property to his wife, C, whom he appointed sole executrix. C died in 1900, having by her will devised all her property to her trustees upon trust for sale. B died in 1885, having by his will devised his property to his trustees, upon trust for his wife for life, with remainder to his children in equal shares. His wife died in 1888 and his children have since shared the rents. X and Y, as the legal personal representatives of the last surviving trustee of C, and Z, the surviving trustee of B, have contracted to sell the property. Can X, Y and Z sell under the statutory trusts by virtue of Pt. IV, 1st Sched., L.P.A., 1925, para. 1 (1) (b), or does para. 1 (4) apply, or how should the conveyance be made?

A. The case does not come under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), for the two sets of trustees are not trustees of the entirety of the land, but only of undivided shares. If there are only four persons beneficially interested altogether, para. 1 (2) may perhaps vest the land in them, if C's beneficiaries elect to take it unconverted, but otherwise the case falls under para. 1 (4), and appointment must be made under para. 1 (4) (iii) to divest the Public Trustee. The simplest plan would appear to be for the beneficiaries to appoint X, Y and Z as trustees for sale, if they approve the contract made by them.

SOLE EXECUTOR—SOLE BENEFICIARY—SALE—PROCEDURE.

461. Q. A sole executor under a will is also the sole devisee of certain freehold property which formed part of the testator's estate. Is it necessary for the executor to assent in writing to the devise to himself?

A. No, for he can give title as executor under the A.E.A., s. 36 (8) and (12). But if an intending purchaser knew of the position before contract, he would do best either to stipulate for sale as beneficiary (in which case the assent would be necessary) or, at least to require the vendor to covenant as beneficial owner.

APPOINTMENT OF NEW TRUSTEE—VESTING DECLARATION—MORTGAGES.

462. Q. A settled estate comprises (*inter alia*) mortgages on freehold property, the old trustees of the settlement have recently retired and new trustees have been appointed in their places, the ordinary form of appointment as given in the conveyancing precedents for appointments subsequent to 31st December, 1925, has been used. Is there any necessity to have a separate transfer of the said mortgages?

A. Yes, as before the new legislation, the exception from the vesting declaration made by the T.A., 1893, s. 12 (3), as amended by the T.A., 1925, 1st Sched., para. (2), being continued by s. 40 (4) (a) of the latter Act.

PERSONAL REPRESENTATIVE OF SURVIVING TRUSTEE—POWERS.

463. Q. A, who died in 1912, by her will appointed her husband, B, and her son, C, trustees thereof. C was killed in the war and B, who was entitled to the occupation of testatrix's house during his life, died in July, 1925, and administration of his estate and effects was duly granted to his eldest son. A, the testatrix, directed her trustees on the death of her husband to sell the house and divide the proceeds as directed in her will. The house is shortly to be put up for sale. Can the son as administrator of the surviving trustees sell the property and give a receipt or will it be necessary for

him to appoint two trustees, unless it can be said after this lapse of time he is selling for administering the estate? No assent has ever been given?

A. On the death of B, the tenant for life, the house should pass to the trustees of A's will for the purposes of the S.L.A., 1925, or his special representatives: A.E.A., 1925, s. 22 (1). B was such a trustee by virtue of the future power of sale and notwithstanding that it could not arise in his lifetime: see *Re Jackson's Settled Estate*, 1902, 1 Ch. 258, approved *Re Davies and Kent's Contract*, 1910, 2 Ch. 35. B's son, as his administrator, is neither A's personal representative nor trustee for the purposes of the S.L.A., 1925, but, by virtue of the T.A., 1925, ss. 18 (2) and 64, he can appoint new trustees for the purposes of the S.L.A., 1925, and such new trustees can then obtain special representation to B for the settled property under the T.A., 1925, s. 163, and, having done so, and paid or provided for death duties, can assent to the devolution of the property to themselves in trust for sale under the A.E.A., 1925, s. 36 (1) and the S.L.A., 1925, s. 7 (5). Since the property was legally vested in B in fee simple by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (c), the special representation is indispensable.

RECENT WILL—SETTLEMENT BY—PROCEDURE.

464. Q. A, who died on the 30th August, 1925, bequeathed "all he possessed to his wife during her lifetime. In the event of her death all property and moneys to be equally divided between my sons B and C." As no executor was appointed by the will, letters of administration with the will annexed were granted to the widow as residuary legatee and devisee for life. A's estate consisted of a dwelling-house and a little personalty, and the debts owing by A have been paid out of the latter. The widow, who resided in the house until a few weeks ago, since when it has been vacant, has been trying to sell the house ever since the death of A, and has now found a purchaser. Can the widow sell as personal representative or must title be made under the S.L.A., 1925, adopting the procedure set out in Q. 418, p. 872 of *THE SOLICITORS' JOURNAL* dated the 7th August, 1926?

A. The widow can give title as personal representative, see the A.E.A., 1925, s. 36 (8) and (12), though if the estate is fully administered the proper procedure is that indicated in the answer to Q. 418, and the two sons as reversioners could perhaps compel her to carry it out. If they are content that she should sell as administratrix, however, they can give her written authority, and she will run no risk.

ASSIGNMENT OF LEASE—IMPLIED OR EXPRESS COVENANT OF INDEMNITY BY ASSIGNEE—WHETHER EXECUTION OF ASSIGNMENT NECESSARY.

465. Q. With reference to the answer to Q. 437, is it necessary for an assignee to execute the assignment to enable an assignor to take the benefit of the covenant implied under s. 77 (1) (c) of the L.P.A., 1925, in cases where (a) the express covenant is omitted in the assignment and no reference whatever is made in the assignment to the covenant implied by the Act; or (b) where the express covenant is omitted but a clause is inserted in the assignment (as in the precedents in "*Prideaux*") to the effect that the covenant under s. 77 (1) (c) is to be implied? Attention is drawn to the fact that a similar covenant is implied in the case of registered land by virtue of s. 24 (1) (b) of the L.R.A., 1925, replacing s. 39 (2) of the L.T.A., 1875, and it does not appear to be the practice in the registry to require a transferee to execute a transfer of registered land to enable the transferor to take the benefit of the implied covenant. The answer to Q. 437 refers to "the usual covenant of indemnity," which, it is assumed, means the express covenant?

A. The obligation of an assignee of a lease who has not entered into any covenant to indemnify his assignor against the rent and covenants was discussed by Abbott, C.J., in *Burnett v. Lynch*, 1826, 5 B. & C. 589; see pp. 601-2. He

held that, although action on the covenant might not lie in such case, the assignor had his proper remedy by other means. This decision might still be applicable in certain circumstances, i.e., if the original lessee simply yielded possession to another on the terms that that other should pay the rent and perform the covenants. See also *Moule v. Garrett*, 1872, L.R. 7 Ex. 101. In any such case, however, the assignor would have considerably more difficulty with his pleadings and evidence than if he could come into court with a clear covenant under the hand and seal of the assignee, and, in particular, if the latter did not personally go into possession, his acceptance of the lease, which would have to be proved affirmatively, might be very hard to establish. The advice is therefore confirmed that, in the case either of express or implied covenant, the wisest plan is to make the person to be bound by the obligation execute the deed.

Court of Appeal.

No. 1.

Frampton v. Gillison. 29 July.

VENDOR AND PURCHASER—RESTRICTIVE COVENANT—PURCHASER DEBARRED FROM "TRADING" OUTSIDE CERTAIN LIMITS—KEEPING SUB-POST OFFICE NOT "TRADING."

The keeping of a sub-post office is not "trading"; the sub-postmaster being a servant of the Postmaster-General at a fixed remuneration, and with carefully defined duties.

Appeal from a decision of Lawrence, J.

The plaintiff sold and leased certain land in plots, with the object of developing it for shops and business premises. He sold a house to the defendant, and, admittedly for the purpose of regulating the competition of shops on his land, the following condition, initialled by both parties, was inserted in the contract: "Trading to be restricted to chemistry and druggists' business and dentist or doctor." The defendant sought and obtained the position of sub-postmaster-general in the district, in other words, the keeping of a local post office. The plaintiff issued a writ and moved (the motion being in effect the substance of the action) for an injunction to restrain the defendant from so acting in alleged breach of the condition. Lawrence, J., held that the keeping of a post office was not "trading," but something in the nature of a monopoly at a fixed remuneration, and he dismissed the motion. The plaintiff appealed. The court dismissed the appeal.

LORD HANWORTH, M.R., said that the object of the covenant was to prevent competing shops on the property. Now, looking at matters in that way, the judge below seemed right in saying that the duties of the defendant as sub-postmaster were outside the provisions of the covenant. He was a servant of the Postmaster-General. He had well-defined duties; and some of them, such as the issue of War Savings Certificates, added very largely to the simpler business of the sale of stamps, &c. But, whatever his duties might be, it seemed a stretching of words to say that the defendant was "trading." A sub-postmaster was a subordinate of the Postmaster-General on definite terms. His remuneration was fixed, and it did not depend on his trading abilities. He could not charge more for his services than a fixed amount, or obtain more by excess of zeal or industry. The court must consider the covenant in its true sense, in the light of the reason for which it was exacted, and, bearing in mind that the duties of a sub-postmaster were carefully circumscribed, it seemed a misnomer to say that he was "trading." Therefore the covenant was not operative, however widely it might be construed, and it did not embrace the duties which the defendant had undertaken. The judge below was right, and the appeal must be dismissed.

WARRINGTON, L.J., delivered judgment to like effect, and SCRUTTON, L.J., agreed.

COUNSEL: *Beyfus*, for the plaintiff; *Owen Thompson, K.C.*, and *F. R. Evershed* for the defendant.

SOLICITORS: *James and Charles Dodd*; *W. R. Millar and Sons*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Darwin and Pearce. Lawrence, J. 19th July.

PRINCIPAL AND SURETY—INTERFERENCE WITH RIGHTS OF SURETY—CALLS ON SHARES—GUARANTEE OF—FORFEITURE OF SHARES—NEW LIABILITY CREATED—DISCHARGE.

Where calls on shares had been guaranteed and the calls were not paid and the shares forfeited, and the articles of association of the company provided that notwithstanding forfeiture the members whose shares had been forfeited should be liable to pay calls only in respect of such shares at the time of the forfeiture, it was held that the company by forfeiting the shares had interfered with the rights of the guarantors and created a fresh liability in them, and they were accordingly discharged.

Holme v. Brunskill, 1877, 3 Q.B.D. 669, applied.

Ladies' Dress Association v. Pulbrooke, 1900, 2 Q.B. 376.

This was a motion by a company that the decision of the trustee in bankruptcy of Darwin and Pearce to reject the company's proof for £63,301 10s. might be reversed, and the proof admitted. The claim in respect of which the proof was lodged arose out of a guarantee, dated 29th December, 1920, whereby, for the consideration therein mentioned, the bankrupts and others guaranteed to the company the payment of all instalments then owing upon shares in the company set out in the schedule thereto to the number of 240,545, whether the shares remained registered in the names of the then holders or were transferred to others, provided that no guarantor should be liable to pay more in the whole than the sum set against his name, the amount of the bankrupts' liability being limited to £63,301 10s. At the time when the guarantee was signed the shares in respect of which it was given had been paid up to the extent of 10s. per share, and a further sum of 10s. was due under the terms of the allotment. The calls were not paid by the shareholders, and on 14th January, 1921, notice was sent by the company to the shareholders to pay the final instalment of 10s. on each of their shares, on or before 15th February, 1921, on pain of forfeiting the shares. Notice was also given to each of the guarantors on 17th January, including the bankrupts, of the service of the last-mentioned notice on the shareholders, and warning the guarantors that in case of default in payment by the shareholders the guarantors were required to pay to the company on or before 17th February, 1921, the amounts set opposite their respective names. On 21st April, 1921, neither the shareholders nor the guarantors having paid the calls, the company passed resolutions to forfeit most of the shares contained in the schedule to the guarantee. The total number of shares forfeited being 185,861. On 8th January, 1925, the company resolved on a reduction of capital, and a sub-division of shares, the shares in question being kept apart and treated as shares unissued and upon which nothing had been paid. This sub-division reduced the nominal amounts of the shares from one share of £1 to twenty shares of one shilling each. On 9th September, 1925, a receiving order was made against the bankrupts, and on 10th April the company lodged their proof for £63,301 10s. as the amounts due under the guarantee. The company were enabled by their articles of association to forfeit shares in respect of which there had been a failure to pay up calls due thereon, and article 31 provided as follows: "Any member whose shares have been forfeited shall, notwithstanding such forfeiture,

be liable to pay the company all calls owing in respect of such shares at the time of forfeiture with interest thereon [as therein provided]."

LAWRENCE, J., after stating the facts, said: The question is whether the forfeiture operates to discharge the liability of the guarantors under the guarantee. The underlying principle is stated in *Polak v. Everett*, 1876, 1 Q.B.D. 669, and *Holme v. Brunskill*, 1877, 3 Q.B.D. 495. In this last case, Cotton, L.J., said: "The true rule is that if there is any agreement between the principals with reference to the contract guaranteed the surety ought to be consulted." This statement received the approval of the Privy Council in *Egbert v. National Crown Bank*, 1918, A.C. 903. Although Cotton, L.J., referred to the rule as applicable to a case where there had been an agreement between the principals, there is no reason for supposing that he intended in any way to affect or negative the rule that where the creditor took upon himself without agreement with the principal debtor to alter the rights of the parties (which alteration would in any way interfere with the arrangements between the surety and the principal debtor), such a step would also have the effect of releasing the surety. As Lord Blackburn said in *Polak v. Everett*, 1876, 1 Q.B.D. 675: "Where the creditor wilfully interferes with the rights of the surety, and alters the equitable rights which he had acquired—alters them even though it may be for the surety's benefit—without the surety's assent, the surety is discharged." In the present case the right created by article 31 was not only a new right, but, further, it cast a more onerous obligation on the shareholder than if the shares had not been forfeited, in that, although he can escape liability as a contributory in the winding up, had the shares not been forfeited, yet, the shares having been forfeited, his liability to an action remains, and he is liable for the call. On the authority of *Stocken's Case*, 1868, L.R. 3 Ch. 412, and *Ladies' Dress Association v. Pulbrooke*, 1900, 2 Q.B. 376, the forfeiture was an interference with the rights of the sureties as against the principal debtors. Further, the bankrupts were, after the forfeiture, in a worse position than they had been at the date when they entered into the suretyship at that date; had they been called upon to pay, they would have had a lien upon the shares as against the principal debtors. The forfeiture took away that lien and to that extent interfered with their rights. The company had an option either to compel the sureties to pay, in which case they would have had a lien on the shares or they could forfeit the shares and make them their own. The company chose the latter course and seriously interfered with the rights of the sureties. The motion accordingly fails.

COUNSEL: *Owen Thompson, K.C.*; *E. W. Hansell*; *St. John Field*.

SOLICITORS: *Charles Russell & Co.* for *Skelton & Co.*, Manchester; *Goldbergs*.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

Societies.

The Law Society.

THE SOCIETY'S LAW SCHOOL.

The lectures and classes for the autumn term will commence on 4th October. The subjects to be dealt with during the term will be, for Intermediate students, (i) General Course (Mr. Wade), (ii) Law of Property (Mr. Wade), (iii) Obligations and Personal Property (Mr. Landon), (iv) Trust Accounts (Professor Dicksee). The subjects for Final students will be, (i) Company Law and Bankruptcy (Dr. Burgin), (ii) Conveyancing and Probate (Mr. Danckwerts), (iii) Bailments, including Carriage (Mr. Chorley). There will be courses on Private International Law (Mr. Besly), and Common Law (Tort) (Mr. Landon), for Honours candidates, and on Constitutional Law (Mr. Wade) for Degree students.

Students can obtain copies of the detailed time-table and of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July next, on application to the Principal.

The Principal (Mr. Wade) will be in his room at the Society's Hall on the following days for the purpose of advising students on their courses of study for the term—

Wednesday, 29th September, 10.30 a.m. to 12.30 p.m., and 2 p.m. to 4 p.m.—Intermediate and Degree students. (New entrants only.)

Thursday, 30th September, 10.30 a.m. to 12.30 p.m., and 2 p.m. to 4 p.m.—Intermediate and Degree students.

Friday, 1st October, 10.30 a.m. to 12.30 p.m., and 2 p.m. to 4 p.m.—Final and Honours students.

PROVINCIAL MEETING.

GENERAL INFORMATION.

Members of the Society are reminded that the business of the meeting will be conducted in the Council Chamber, Council House, Victoria-square.

A reading and writing room will be provided at the Law Library (entrance from Wellington-passage or Temple-row West).

The enquiry office will be at the Law Library, and during the business meeting there will also be a temporary enquiry office in the ante-room of the Council Chamber.

Telegrams and letters addressed to any member, care of "Oyez," Birmingham, will be taken charge of by The Solicitors' Law Stationery Society, Limited (the proprietors of *The Solicitors' Journal*), at the society's table in the ante-room of the Council Chamber, or, if desired by the member, will be forwarded to his address at Birmingham as supplied by the hon. secretary, Mr. Wilfrid C. Mathews, Wellington-passage, Bennett's-hill, Birmingham.

Members visiting Birmingham for the meeting will be admitted to the privilege of temporary membership of the following clubs on production of their tickets of membership and entering their names in the respective visitors' books: Chef Club, Paradise-street; Conservative Club, Temple-row; Midland Conservative Club, Waterloo-street; Union Club, Colmore-row; and also to the links of the following golf clubs on production of their tickets of membership, viz.: The Harborne Golf Club; the King's Norton Golf Club; and the Edgbaston Golf Club.

Ladies are invited to all functions except the banquet.

Incorporated Accountants.

The next examination of candidates for admission into the Society of Incorporated Accountants and Auditors will be held on 8th, 9th, 10th and 11th November.

Women are eligible under the Society's regulations to qualify as incorporated accountants upon the same terms and conditions as are applicable to men.

Solicitors' Managing Clerks' Association.

The following is a Synopsis of Classes for the instruction of Law Clerks which will be held during the Winter Session (1926-27) at the Royal Courts of Justice.

Course A.—Each Friday at 6.45 p.m., commencing 15th October, 1926, and ending 17th December, 1926. The Practice of the County Court. Lecturer, Mr. Ebenezer Smith. Introductory remarks: Jurisdiction—Metropolitan Courts—Parties—Affidavits of debt—Particulars of Claim—Præcipes—Summonses, Ordinary, Default, Special Default—Remitted Actions—Service—Substituted Service—Security for Costs—Defences—Payment into Court—Third Party Proceedings—Interlocutory Applications—Discovery—Discontinuance—Evidence—Briefs—Trial—Judgments—Judgments by Default—Registration of Judgments—Change of Parties—Costs—Taxations—Execution—Garnishee Proceedings—Judgment Summonses—Examination of Judgment Debtors—New Trials—Appeals.

Course B.—Each Monday at 6.45 p.m., commencing 10th January, 1927, and ending 14th March, 1927. Practical Conveyancing. Lecturer, Mr. W. A. Ling. I. Leases and Tenancies—The form and contents of a Lease—Kinds of Leases—Rights of Landlord and Tenant—Assignments, Surrenders, &c. II. Mortgages and Charges—The form and contents of a Mortgage—Kinds of Mortgages—Rights of Mortgagee and Mortgagor—Transfers, Reconveyances, etc.

Course C.—Each Wednesday at 6.45 p.m., commencing 12th January, 1927, and ending Wednesday, 16th March, 1927. Company Law. Lecturer, Mr. J. Blackburn. Formation of Public and Private Companies—Preparation of Memorandum and Articles of Association—Capital—Prospectus—Underwriting—Debentures and Debenture Stock and Trust Deeds—Reconstruction and Amalgamations—Schemes of Arrangement—Winding up.

Arrangements have also been made for a series of five lectures on the Law relating to Landlord and Tenant, by Mr. C. J. W. Farwell, K.C., at Essex Hall, Essex-street, Strand, on five consecutive Mondays at 7 p.m., commencing on Monday, 25th October, 1926, to which non-members will be admitted for a fee of 10s. 6d. for the course.

Rules and Orders.

THE COUNTY COURT (No. 1) RULES, 1926.

DATED JULY 26, 1926.

(Continued from page 956).

16. Forms 247, 248 and 252 in Part I of the Appendix shall be annulled and the following Forms shall be substituted therefor:—

" 247.

SUMMONS FOR RECOVERY OF POSSESSION OF TENEMENT AGAINST TENANT OR OTHER PERSON HOLDING OVER.

[Heading as in Form 22.]

You are hereby summoned to appear at a Court to be holden at _____ the _____ day of _____ 19 _____, at the hour of _____ in the forenoon, to answer the Plaintiff, wherefore you neglect or refuse to deliver up to him possession of (1) _____ in the County of _____ within the district of this Court let on a _____ tenancy which has been duly determined by a notice to quit [or has expired].

And take notice, that the Plaintiff also claims of you for rent [and mesne profits] the sum of £ : : , the particulars of which are hereunto annexed.

And further take notice, that if you do not appear at the said Court, and show cause why you do not deliver up possession as aforesaid, the Court may order that possession of the said premises be given by you to the Plaintiff forthwith, or on or before such day as it shall name, and that if such order be made and be not obeyed a Warrant may issue to give possession to the Plaintiff.

Dated the _____ day of _____ 19 _____
To the Defendant.

	Registrar.
	£ s. d.
Claim for
Costs of this Summons
Solicitor's Costs
Total	£

(2) Take notice.—If the Plaintiff in this action be not your immediate landlord, you must, upon your being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under section 140 of The County Courts Act, 1888, to forfeit to your immediate landlord three years' rackrent of the premises held by you of him, in respect of which the summons shall have issued.

SEE BACK.

If you and the Plaintiff can agree as to the time when possession shall be given, and the amount due for rent [and

(1) Describe the premises let.
(2) 51 & 52 Vict. c. 43, s. 140.

mesne profits], and the mode of payment, and will, before the action is called on, sign a memorandum of such agreement and deliver the same to the Registrar, you will save half the hearing fees.

If you give up possession and pay the amount claimed for rent [and mesne profits] and costs, as stated in the Summons, into the Registrar's office, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, you will avoid further costs, unless the Court orders you to pay any further costs properly incurred by the Plaintiff before receiving notice of such payment; but you may give up possession and pay the amount claimed at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the Plaintiff to incur.

If you give up possession and admit a part only of the claim for rent [and mesne profits], you may, by paying into the Registrar's office the amount so admitted, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs and if the Court thinks fit recover your further costs against the Plaintiff, unless the Plaintiff proves at the trial an amount exceeding your payment, or the Court orders you to pay any further costs properly incurred by the Plaintiff before receiving notice of such payment.

If you intend to dispute the Plaintiff's claim for rent [and mesne profits] on any of the following grounds:—

1. That you have a set-off or counter-claim against the claim of the Plaintiff;
2. That you were under Twenty-one when the debt claimed was contracted;
3. That the debt claimed is more than six years old;
4. That you have been discharged from the Plaintiff's claim under any Bankruptcy Act;
5. That you have already tendered to the Plaintiff what is due;
6. That you have a Statutory or Equitable Defence;
7. That you intend to rely on fraud or misrepresentation;

you must give notice thereof to the Registrar five clear days [or if the claim exceeds £50, ten clear days] before the day of trial; and such notice must contain the particulars prescribed by The County Court Rules; and you must deliver to the Registrar as many copies of such notice as there are Plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off or counter-claim, you must, with the notice thereof, also deliver to the Registrar a statement of the particulars thereof. If your defence be a tender, you must pay into Court the amount tendered.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the Registrar of this Court, upon payment of the proper fee.

" 248.

SUMMONS FOR RECOVERY OF POSSESSION OF TENEMENT FOR NON-PAYMENT OF RENT.

[Heading as in Form 22.]

You are hereby summoned to appear at a Court to be holden at _____ the _____ day of _____ 19 _____, at the hour of _____ in the forenoon to answer the Plaintiff, why possession of (1) _____ situate at _____ in the County of _____

(1) Describe premises claimed.

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FOR FURTHER
INFORMATION WRITE

24, 26 & 28, MOORGATE, E.C.2.

within the district of this Court should not be recovered by the Plaintiff, by reason of the rent payable in respect thereof by you being half a year in arrear, and the Plaintiff having right by law to re-enter for the non-payment thereof.

If you pay to the Registrar the rent in arrear, and the costs of this action, as stated at the foot of this summons, five clear days before the day on which you are required to appear to this summons, this action will cease.

And take notice, that if you do not pay such rent in arrear and costs, or appear at the said Court, and show cause why possession of the said premises should not be recovered against you, the Court may order that possession of the said premises be given up by you to the Plaintiff on or before such day not being less than four weeks from the day of hearing as the Court shall name unless within that period the rent in arrear and the costs are paid into Court, and that if such order be not obeyed, a warrant may issue to give possession of the said premises to the Plaintiff.

Dated this	day of	19	..
		Registrar.	
		£ s. d.	
Rent in arrear
Costs of this Summons
Solicitor's Costs
Total ..£			

(*) Take notice.—If the Plaintiff in this action be not your immediate landlord you must upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under section 140 of The County Courts Act, 1888, to forfeit to your immediate landlord three years' rackrent of the premises held by you of him, in respect of which the summons shall have issued.

(*) 51 & 52 Vict. c. 43, s. 140.

SEE BACK.

If you pay the rent in arrear and costs, as stated in the Summons, into the Registrar's office, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, you will avoid further costs, unless the Court orders you to pay any further costs properly incurred by the Plaintiff before receiving notice of such payment; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the Plaintiff to incur.

If you admit a part only of the rent in arrear you may, by paying into the Registrar's office the amount so admitted, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs, and if the Court thinks fit, recover your further costs against the Plaintiff unless the Plaintiff prove at the trial an amount exceeding your payment, or the Court orders you to pay any further costs properly incurred by the Plaintiff before receiving notice of such payment.

If you intend to dispute the Plaintiff's claim on any of the following grounds:—

1. That you have already tendered to the Plaintiff the amount due for rent;
 2. That you have a Statutory or Equitable Defence;
 3. That you intend to rely on fraud or misrepresentation;
- you must give notice thereof to the Registrar five clear days [or if the claim exceeds £50, ten clear days] before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the Registrar as many copies of such notice as there are Plaintiffs, and an additional copy for the use of the Court. If your defence be a tender, you must pay into Court the amount tendered.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the Registrar of this Court, upon payment of the proper fee.

(To be continued.)

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert Valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 30th September, 1926.

	MIDDLE PRICE 22nd Sept	INTEREST YIELD.	YIELD WITH REDEMPTION.
English Government Securities.			
Consols 2½%	54½	4 12 0	—
War Loan 5% 1929-47	101½	4 19 0	4 19 0
War Loan 4½% 1925-47	95½	4 14 6	4 17 6
War Loan 4% (Tax free) 1929-47 ..	99½xd	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	98	3 12 0	4 18 0
Funding 4% Loan 1960-90	85½	4 13 6	4 15 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92½	4 7 0	4 8 6
Conversion 4½% Loan 1940-44 ..	95	4 15 0	4 19 0
Conversion 3½% Loan 1961	74	4 14 6	—
Local Loans 3% Stock 1921 or after	62½	4 16 0	—
Bank Stock	254	4 15 6	—
Colonial Securities.			
India 4½% 1950-55	91½	4 19 0	5 2 0
India 3½%	67½	5 3 6	—
India 3%	57½	5 4 0	—
Sudan 4½% 1939-73	93½	4 17 0	5 0 0
Sudan 4% 1974	85½	4 13 0	4 17 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	80½	3 15 0	4 12 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62½	4 16 0	—
Bristol 3½% 1925-65	75½	4 13 0	5 0 0
Cardiff 3½% 1935	89½	3 18 6	5 0 6
Croydon 3% 1940-60	66½	4 11 0	5 2 0
Glasgow 2½% 1925-40	76½	3 6 0	4 16 0
Hull 3½% 1925-40	75½	4 13 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	72½	4 16 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½	4 15 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61½	4 17 0	—
Manchester 3% on or after 1941	63½	4 15 0	—
Metropolitan Water Board 3% 'A' 1963-2003	61½	4 17 0	4 17 6
Metropolitan Water Board 3% 'B' 1934-2003	62½	4 15 6	4 17 0
Middlesex C. C. 3½% 1927-47	79½	4 8 0	5 0 0
Newcastle 3½% irredeemable	71½	4 18 0	—
Nottingham 3% irredeemable	62½	4 16 0	—
Plymouth 3% 1920-60	66xd	4 11 0	5 1 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 0 6	—
Gt. Western Rly. 5% Preference	94½	5 5 6	—
L. North Eastern Rly. 4% Debenture ..	78½	5 2 0	—
L. North Eastern Rly. 4% Guaranteed	74	5 8 0	—
L. North Eastern Rly. 4% 1st Preference	67	5 19 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	79½	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	77½	5 3 6	—
L. Mid. & Scot. Rly. 4% Preference ..	73	5 9 6	—
Southern Railway 4% Debenture	80½	4 19 6	—
Southern Railway 5% Guaranteed ..	98½	5 1 6	—
Southern Railway 5% Preference	95	5 5 0	—

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